

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
RCP No. 182 of 2022**

**Mr. Srikanth Marta**

..... **Complainant**

**Vs.**

**M/s. RVS Developers Pvt Ltd,  
Represented by its Managing Director  
Mr.S.Senthilazhagan**

..... **Respondent**

Complainant : Rep. by Mr. TN.Buveneswaran, Advocate

Respondent : Exparte

Heard on: 27/06/2023

Delivered on: 15/09/2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a plot with interest, and costs is filed under section 31 of the *Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as RERA Act).

**2. Averments of the complainant, in brief, as follows:**

(a) The Learned counsel for the complainant avers that the complainant had booked a flat in the respondent's project by name 'Montana' at Ninnakarai Village, Chengalpattu Taluk, Kanchipuram District. The complainant has paid a sum of Rs.15,00,000/- out of the total cost of the flat of Rs.24,96,165/-. The complainant has paid a sum of Rs.1,00,000/- on 20/10/2014, Rs.4,00,000/- on 05/11/2014, Rs.5,00,000/- on 25/11/2014 and finally another sum of Rs.5,00,000/- on 24/12/2014. The respondent thereafter had informed the

complainant and had undertaken to get the building plan approved from the concerned authority and had also assured to execute the sale and the construction agreement. The complainant avers that the construction work had still not started and thus prays for cancellation and refund of the money paid by him with interest.

3. The respondent failed to appear, despite being given opportunity hence he has been treated as ex parte.

4. An attempt to settle the matter amicably has failed.

5. The complainant has filed his evidence on affidavit with documents. The respondents did not file any documents and were treated as Ex-parte.

6. On the basis of the complainant contentions, the following points arise for determination:

(i) Is the complainant entitled for the refund of the money paid by him with interest due to delay in delivery the respective flat?

(ii) What are the reliefs made out?

7. **Answer for the Point No. (i):-**

(a) From the facts submitted by the complainant, it is made out that the complainant had entered into the respondent's project and paid the advance of Rs.1,00,000/- way back on 20/10/2014. The complainant has paid a total sum of Rs.15,00,000/- out of the full consideration amounting to Rs.24,96,165/- the money was paid as shown in the table below:-

<b>Date of Payment</b>	20/10/2014	05/11/2014	25/11/2014	24/12/2014
<b>Amount of Payment</b>	Rs.1,00,000/-	Rs.4,00,000/-	Rs.5,00,000/-	Rs.5,00,000/-
<b>Exhibit No.</b>	Ex-A2	Ex-A3	Ex-A4	Ex-A5

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The first point to be established here hence is whether the project started in 2014 will allow the allottee-promoter relationship to be established under the RERA Act which came much later in 2016. The respondent has collected a sum of Rs.15,00,000/- out of the agreed amount of Rs.24,96,165/-, however the respondent had assured that the sale and the construction agreement would be entered upon later which has still not been done.

(b) It is established that the complainant has paid the money for a Real Estate for a purchase of a flat from the respondent. The respondent has issued the cost breakup (EX-A1) in which the details of the flat no. 210 along with other required details have been mentioned. The respondent has also issued receipts for the money received by him from time to time (EX-A2, A3, A4, A5). This would clearly establish that the respondent was developing this project in which the complainant was an allottee of the flat no. 201 and that the respondent had received a sum of Rs.15,00,000/- from the complainant. This clearly establishes the promoter allottee relationship between the 2 parties within the meaning of section of 2(zn) and 2(d) of the RERA Act. Since, the apartment is yet to start, the project would fall in the category of an on-going project within the definition of section 3 of the RERA Act requiring registration.

(c) Even after a lapse of nearly 8 years of the 1st payment, the construction of the flat is yet to start. In view of this, the non execution of the agreements would not stand in the way of the complainant's eligibility to claim refund made out under section 18(1) of the RERA Act. The collection of more than 10% of the total consideration without execution of the agreements would entail a penalty on the respondent for having violated section 13 of the RERA Act.

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(d) Since, there is no possibility of the respondent being able to hand over the flat, the complainant is entitled to the refund of Rs.15,00,000/- paid by him with interest and thus the 1st point is determined.

**8. Answer for Point No: (ii):-**

a) Therefore, the complainant is entitled for the refund of an amount of Rs. 15,00,000/- from the Respondent with interest.

b) The rate of interest payable shall be current highest marginal cost lending rate of interest of State Bank of India (SBI) +2% per annum. Hence the complainant is entitled for interest at the rate of 7.50% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.50% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) A penalty of Rs.50,000/- is imposed on the respondent for violation of Section 13 of the RERA Act.

**9. In the result, the respondents are directed as follows:-**

The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.

Sd/- 15/09/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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**LIST OF WITNESSES**

CW-1 --- Srikanth Marta

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Cost Break Up
Ex.A2	20/10/2014	Cash Receipt
Ex.A3	05/11/2014	Cash Receipt
Ex.A4	25/11/2014	Cash Receipt
Ex.A5	24/12/2014	Cash Receipt

**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**

Sd/- 15/09/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI.

